Amnesty International UK

BRIEFING

Government Immigration Bill, Bill 133 (Session 2022-23)

House of Lords Second Reading, 10 May 2023

Amnesty International deeply regrets the introduction of this Bill. It seeks to oust judicial control of executive powers, deny refugees their right to seek asylum in the UK, exclude victims from modern slavery protections and strip some British children of their rights to British citizenship.[1] It plainly risks if not seeks conflict over the European Convention on Human Rights and the court.

This is all to be done in pursuit of a singular purpose. That purpose, stated in Clause 1, is "*to prevent and deter unlawful migration*", particularly by routes the Bill describes as "*unsafe and illegal*". In setting this purpose, ministers show a remarkable disregard for people's real lives, real world events, this country's international obligations concerning these and even ministers' own policy as it relates to these things. Sadly, in promoting the Bill, this lack of respect for law, fact and people's innate dignity has led to ministers expressing themselves in terms that are as indecent and racist as is this Bill and which have rightly been trenchantly criticised by members of their own party.[2]

This Bill is plainly not compliant with international human rights law. Nor is it compliant with basic principles of legality and constitutionality. That it was rushed through the other place emphasises what is, in any event, confirmed by its content. It is not fit for an Act of Parliament. It should never have been introduced and should not be enacted.

An examination of the practical impact of this Bill in light of current events

Sudan is descending into civil war. It has been ravaged by political and ethnic persecution, and conflict, for many years. Before fighting broke out between the Sudanese army and a paramilitary group, who together overthrew Sudan's transitional government in late 2021,[3] more than 3 million Sudanese people were already displaced inside its borders. Sudan also hosted more than 1.1 million refugees from other countries. 850,000 Sudanese were refugees in other countries. Nearly half of that population hosted by Chad, a further 310,000 people hosted by South Sudan.[4] All three countries have for years hosted refugee populations far in excess of that hosted by the UK. It is to Chad and South Sudan that many Sudanese and other refugees are currently fleeing.

In keeping with wider Government policy, the Home Secretary has said there will be no 'safe routes' created to the UK for any Sudanese refugees. This includes no scheme for British nationals or residents to provide safety here for even their close Sudanese family.

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[1] On citizenship rights, please see our joint briefing with the Project for the Registration of Children as British citizens

[2] As reported in *The Guardian* and elsewhere, this is not confined to but includes what ministers say on asylum policy.

[3] As more fully summarised by Amnesty International here and here.

[4] Refugee data can be found and compared on UNHCR's refugee data finder.

Any Sudanese now fleeing the country, or already having fled and seeking a place of safety, can seek asylum here only if they first reach the UK. To make such a journey, the Home Secretary requires them to have a visa. But her rules (as those of her predecessors) do not permit anyone, Sudanese or otherwise, to obtain or use a visa for the purpose of seeking asylum. There is no Government-licensed route to seek asylum – not even for Sudanese refugees with especially strong connection to this country, including family settled here.

But even were a Government-licensed route created, this could not in itself ensure any Sudanese person could access it. Such a route would usually require someone to obtain and travel on a passport that identifies them. It would usually require someone to first make a visa application and successfully complete the application process, something which itself will usually require a degree of stability and safety over the period required for making that application and awaiting its outcome. Finally, it would require the person to access a flight or another journey to safety via regular means, generally via an official embarkation point.

None of these things are necessarily safe or possible for someone fleeing persecution to do.

International refugee law, accordingly, does not require any refugee to do any of these things. Nor does it require a refugee to seek asylum in any particular place. It does, however, enjoin all members of the international community to recognise the right to seek and enjoy asylum from persecution,[5] to share responsibility for that[6] and to cooperate with UNHCR in doing so.[7] It is not hard to understand why international law is constructed in this way. If some countries refuse to meet obligations that are expected of others, it is entirely predictable that those others will be less willing to do so and refugees will be less likely to find safety anywhere.

Yet, the very purpose of this Bill is to refuse to even consider the asylum claim made by the Sudanese – or indeed other refugee – who can only seek asylum here by an unsafe journey and for whom no Government-licensed ("lawful" in the words of Clause 1(1) of this Bill) route is even hypothetically available, let alone truly accessible. Whatever the merits of the refugee's asylum claim, whatever the strength of their connection to the UK and however indecent or impractical the aim of expelling them, their expulsion is to be required by this Bill and no moral, legal or practical consideration is to obstruct that. To that end, this Bill is to do each of the following.

1. Oust judicial oversight

Several provisions of this Bill effectively oust judicial oversight. Of especial significance are the following. Clause 4(1)(d) requires that an application for judicial review cannot

[5] Article 14 of the 1948 Universal Declaration of Human Rights as given effect by the 1951 UN Convention relating to the Status of Refugees and its 1961 Protocol ("the Refugee Convention").
[6] The Refugee Convention's Preamble expressly draws attention to the need for international co-operation to avoid responsibilities falling disproportionately.
[7] Article 35 of the Refugee Convention expressly enjoins States to co-operate with UNHCR.

interfere with the requirement in Clause 2 to expel someone. Clause 52 emphasises this by barring any court from preventing or delaying the person's expulsion. Clause 53 seeks to extend that exclusion to the European Court of Human Rights, unless the minister chooses to abide by any interim measure that court may indicate. Clause 12(4) bars a court or tribunal, for up to 28 days, from considering the legality or reasonableness of the detention of someone to whom Clause 2 applies. The highly restricted legal proceedings to which Clause 37 relates, which are largely controlled by the Home Secretary, are a mere fig leaf to the notion of legal propriety and judicial consideration.

2. Deny refugees their right to seek asylum

Clause 4(1)(a) and (b) expressly provide that where Clause 2 requires a person's expulsion, no consideration of their asylum or human rights claim can interfere with that. Clause 4(2) and (3) go further to require that no asylum or human rights claim can ever be considered.

3. Exclude victims from modern slavery protections

Clause 4(1)(c) expressly provides that where Clause 2 requires a person's expulsion, no consideration of their claim to be a victim of slavery or human trafficking can interfere with that. Clauses 21 to 28 switch off modern slavery protections for people to whom Clause 2 applies (and indeed for some other victims).

4. Discriminatory exclusion from human rights protections

Clause 1(5) disapplies section 3 of the Human Rights Act 1998, the duty on public authorities to apply legislation in line with European Convention rights in so far as it is possible to do so. This would end the universality of human rights protection in domestic law because it is specifically refugees, victims of human trafficking and other migrants, as well as some British children, who are to be denied that protection; and will mean the Bill's implementation breaks with the UK's international commitments.

5. Deprive British children of their citizenship rights

Clauses 30 to 36 impose a permanent bar to British nationality of anyone whose expulsion is required by Clause 2. The people caught include children brought or trafficked to the UK in breach of immigration rules. Whether that is by accident or intention, it is not the responsibility of the child. Moreover, citizenship rights of children are given by Act of Parliament in circumstances intended to recognise that the child is British by identity and connection.[8] Nonetheless, any child taken into care who grows up in the UK or any child born overseas to a British citizen is to be permanently deprived of their rights to British citizenship if caught by Clause 2 of this Bill.

Conclusion

Far too much excitement and hostility has been stirred, including by ministers, over the increasing visibility of the journeys that those relatively few refugees, who seek asylum in

[8] As discussed more fully in the joint briefing referred to at fn 1 (above).

the UK, must make. Worse, successive Home Secretaries have responded with an utterly reckless policy of delaying or refusing to deal with the asylum claims of these people. Amnesty warned of this recklessness in December 2020 when it was first put into the immigration rules;[9] and once again when the Nationality and Borders Act 2022 made it law.[10] This policy has, entirely predictably, created an enormous, harmful and costly backlog of asylum claims.

Instead of heeding warnings, or learning lessons from their recklessness, ministers have merely decided to extend this same policy – a supposed deterrent – by now seeking parliamentary licence to permanently refuse to deal with asylum claims. Shutting down the asylum system in this way will in due course reduce the backlog by the expediency of no longer counting the people and their claims. That is not merely a sham. It is wholly irresponsible and will do much harm at even greater cost. If people are ultimately deterred from entering the UK's asylum system, it can be expected that they will therefore make less visible journeys and go to ground. Their lives and wellbeing in the UK are, by this Bill, to be made singularly at risk from the Home Office. Human traffickers, modern slavers and other organised criminals will, therefore, thrive upon a resident population created by this Bill who are not only to be made alienated and terrified of official authority, but even denied their very humanity and legal status.

[9] See Amnesty's correspondence with the Immigration Minster.

[10] Amnesty briefed extensively during the passage of the Nationality and Borders Act 2022 including on section 16 of that Act, which made into law what had been policy in the immigration rules on that section's commencement on 28 June 2022 by regulation 2 of (and Schedule 1 to) the Nationality and Borders Act (Commencement No. 1, Transitional and Saving Provisions) Regulations 2022, SI 2022/590.